



The Task Force on Court Facilities
455 Golden Gate Avenue, San Francisco, CA 94102-3660

FINANCE AND IMPLEMENTATION COMMITTEE

Conference call report

September 20, 2000

TASK FORCE ATTENDEES: Hon. Daniel Kremer Hon. Wayne Peterson	PRESENTERS: Dr. Thomas Gardner, VITETTA
COMMITTEE MEMBERS: PRESENT: Mr. David Janssen, Chair Mr. Greg Abel Mr. Fred Klass Hon. Charles Smith Hon. Diane Wick	TASK FORCE STAFF: Mr. Bob Lloyd Mr. Bob Emerson
ABSENT: None	CONSULTANTS TO THE TASK FORCE: Dr. Thomas Gardner, VITETTA Mr. Jay Smith, DMJM Ms. Kit Cole, VITETTA
	GUESTS: Mr. John Abbott, Orange County Counsel's office Mr. Rubin Lopez, CSAC Ms. Sally Lukenbill, Department of Finance Ms. Jody Patel, AOC Office of Governmental Affairs Mr. John Van Whervin, Los Angeles Superior Court <i>(Others may have been present but not identified on the telephone)</i>

Committee agenda

1. Information regarding the Infrastructure Bank
2. Maintaining the flow of projects in the pipeline: a discussion of Judge Peterson's issue related to incentivizing counties and courts to continue construction, including that proposed by AOC in the BCP from 1999-00 budget year
3. Establishing the threshold for rejection of buildings by the state, including a review of "deficient" buildings summary. Information regarding deficient buildings will be forwarded to the recipient list prior to the call, in a separate packet.
4. Elements that could be included in the MOE between the state and the counties
5. Language which would address the "double count" issue
6. Financing and funding issues, based on information provided previously by VITETTA and faxed to Committee on September 6
7. Summary of language approved/amended by Task Force at August 30 meeting
8. Draft outline of Phase 5 report

Agenda Item #1 – Information regarding Infrastructure Bank

Agenda Item #2 - Maintaining the flow of projects in the pipeline: a discussion of Judge Petersen's issue related to incentivizing counties and courts to continue construction.

The Committee discussed the information provided by the consultants regarding Agenda Items #1 and #2 simultaneously. The Committee determined that it would include in the Phase 5 report recommendation that the Legislature and Governor consider the Infrastructure Bank in the Trade and Commerce Agency as a potential source of funds for financing projects in the pipeline.

The consultants were asked to draft language relative to the pipeline and present it to the Committee at its next meeting.

Agenda Item #3 – Threshold for rejection of buildings and presentation of DMJM findings relative to “deficient” buildings

The Committee discussed and reviewed the information provided in the Committee packet, as well as the findings of DMJM and requested that the consultants provide language relative to the rejection of buildings at the next Committee conference call.

Agenda Item #4 - Elements that could be included in the MOE between the state and the counties

The Committee reviewed the information relative to MOE elements and requested that the consultants provide specific language relative to this issue on the Committee conference call.

Agenda Item #5 - Language which would address the “double count” issue

The Committee discussed the issue and requested that Bob Lloyd provide confirmation of the issue and brief discussion at the Committee's October 4 conference call.

Agenda Item #6 - Financing and funding issues, based on information provided previously by VITETTA and faxed to Committee on September 6

Relative to fee issues, the Committee determined that it would include in the Phase 5 report the following:

- A report regarding the variety of fee and funding options considered during the course of the project but would not recommend one source over another.
- A recommendation that the Legislature and Governor consider making the Courthouse Construction fee uniform across all counties.

Agenda Item #7 - Summary of language approved/amended by Task Force at August 30 meeting

Strikeouts and italics reflect changes made by the Committee on the September 20 conference call. Changes made by the Task Force at its meeting on August 30 in Santa Barbara have been integrated into the text.

Responsibility

1. The state shall ultimately be fully responsible for all court facilities, including providing facilities for current and future judges and staff.
2. Pursuant to AB 233, responsibility for providing court facilities for new judges and staff associated with those judges shall continue to rest with the state, after July 1, 2001.
3. Responsibility for providing court facilities shall remain with the counties until completion of the negotiations between the Judicial Council and the counties.
4. Responsibilities of parties sharing mixed-use buildings shall be established by agreement.

Fiscal Neutrality

1. Responsibility for funding existing debt on facilities shall remain with the counties until the debt is retired, either directly or by transferring the revenue stream and debt to the state.

2. The control of court facilities should transfer to the state without any fiscal gain or loss to either the counties or the state.
3. If title transfers, it shall do so without payment for capitalized value of buildings and the land associated with those buildings. Determination of appraised value shall not be necessary as a condition of transfer.
4. Existing non-Rule 810 facility operations and maintenance costs shall continue to be funded by the counties through maintenance of effort (MOE) agreement.
5. The MOE will be determined based on a calculation of the average of the most recent *five* fiscal years of non-Rule 810 allowable costs related to facilities. Additionally, ~~the appropriate consumer or producer price index will be calculated and added, as appropriate~~ *the amounts for each year shall be escalated to current dollars using the consumer or producer price indices for each year (or combination thereof), and averaging the resulting amounts, unless determined otherwise.* The MOE amount will be fixed based upon the adjusted *five-year* average, as *adjusted for escalation* to the effective date of the negotiated transfer agreement between the state and the counties. Prior to _____(date) each county shall submit to the Department of Finance data regarding non-810 facility costs from the most recent three fiscal years. Prior to being submitted to the Department of Finance, all data shall be certified by the county auditor.
6. Revenue generated by the Courthouse Construction fees will transfer from the counties to the state, less any funds obligated to debt service, ~~should the outcome of the negotiations between the Judicial Council and the counties determine that the debt should remain with the counties to the extent that such debt remains with the counties.~~ Should the debt transfer to the state, the corollary debt service stream shall also transfer to the state.

Principles for Transfer

1. It is critical to expedite the transfer of responsibility for court facilities to the ~~state~~ *Judicial Council*.
2. The transfer of responsibility shall be accomplished through negotiations between the Judicial Council and the counties, in consultation with the local court.
3. The ~~state~~ *Judicial Council* shall not hold the counties liable for deferred maintenance that existed in the base year and for which no funds were *committed* to address that maintenance.
4. Issues regarding occupancy and use of space within a mixed-use building shall be agreed upon by the Judicial Council and the counties and shall be spelled out in an MOU.
5. The ~~state~~ *Judicial Council* may reject the transfer of unsuitable buildings, in which case the county will continue to be responsible for providing the court with suitable and necessary space. A building that is "unsuitable for court use" is defined as any building with significant health, safety or seismic deficiencies. All other single use court facilities shall transfer to the state, unless mutually agreed to by all parties. Counties may appeal rejection of an unsuitable building by the state to the State Public Works Board. The "burden of proof" to demonstrate the justification for which the facility was rejected lies with the state. *In the event that a building is rejected due to significant deficiencies, the county shall have the option of correcting the significant deficiencies prior to transfer, or furnishing the state a sum of money equal to the cost of the remedy. The state may use county's contribution for renovation or replacement of the facility. Should correction of the significant deficiencies be determined as unfeasible, the county shall be obligated as follows:*
 - a) *To provide suitable court faculties under the current law, or*
 - b) *To provide to the state an amount of money equal to the cost of replacement of the facility with a suitable facility of equivalent amount of space."*
6. Historically significant facilities, may or may not transfer, but must be made available to the ~~state~~ *Judicial Council* for court use or the county can opt to provide suitable and adequate court facilities in an alternative facility. Facilities considered "historic" shall either be registered on the state's historic register (pursuant to Health and Safety Code 18950) or be eligible for inclusion on the register.

Implementation Issues

1. Negotiations between the ~~state~~ *Judicial Council* and the counties regarding the transfer of facilities must be complete within three years after legislation implementing the Task Force's recommendations becomes effective.

2. The Judicial Council, in consultation with the local courts, and the counties will negotiate on a county-by-county and building-by-building basis in order to determine the most optimal way to provide court facilities in that county.
 3. ~~The Judicial Council, in consultation with the local courts, and the counties will participate in the negotiations regarding the buildings. Local court representatives may observe the negotiations, as well as any other parties mutually agreed to by the Judicial Council and the county.~~
 3. The state Public Works Board will be the final arbiter in any disputes between the Judicial Council and counties during the building-by-building negotiations.
 4. All counties shall participate in the transfer of responsibility for court facilities from the counties to the ~~state~~ *Judicial Council*.
 5. Both the county and the ~~state~~ *Judicial Council* are entitled to equity in court facilities, based on the respective proportional use of area by the courts and by non-court county functions, at the time that the MOU is determined, regardless of which entity holds title to the facility.
 6. Any county ~~general~~ funds or property that have been allocated, approved, appropriated, or committed for a court facility project by a county board of supervisors, by resolution or ordinance, shall remain committed to that project.
 7. The ~~state~~ *Judicial Council* reserves the right to require a county to complete a project in the design or construction phase prior to its transfer to the state.
 8. The ~~state~~ *Judicial Council* can negotiate design changes related to a court facility project with the county to the degree that the design changes do not increase the cost of the project to the county.
 9. The ~~state~~ *Judicial Council* reserves the right to dispose of surplus property when title for the property transfers to the state.
 10. Prior to disposing of court facilities that were previously the responsibility of the counties, the ~~state~~ *Judicial Council* shall comply with the requirements of Government Code section 11010.5 et seq.
 11. Prior to the ~~state~~ *Judicial Council* making a decision to sell, lease or otherwise dispose of a court facility transferred from a county to the state, it shall consult and discuss the potential sale, lease or disposition with the affected county. The ~~state~~ *Judicial Council* shall also consider whether the potential new or planned use of the facility:
 - Is compatible the use of other adjacent public buildings.
 - ~~Would interfere with public access to other governmental functions adjacent to the court facility.~~
 - Would unreasonably depart from the historic or local character of the surround property or local community.
 - Would have a negative impact on the local community.
 - Will unreasonably interfere with other governmental agencies that use or are located in or adjacent to the court facility.
- Additionally, the ~~state~~ *Judicial Council* shall consider whether the decision to cease using the facility or site outweighs a public good in maintaining it as a court facility or site.
- *In perpetuity*, the counties shall transfer 75% of the unencumbered revenue generated by the Courthouse Construction fee to the Judicial Council for allocation by the Judicial Council. The remaining 25% will be retained by the court and allocated pursuant to current law.

Principles for negotiation involving mixed-use buildings

Strikeouts and italics reflect changes made by the Committee on the September 20 conference call. Changes made by the Task Force at its meeting on August 30 in Santa Barbara have been integrated.

1. Responsibility for court facilities can be accomplished by the state either holding fee title or entering into a lease agreement with a county or a private landlord or any other mutually-agreed to mechanism.
2. The county and the Judicial Council each have equity rights to the space *occupied respectively by the county and the court they occupy*, regardless of which party holds title.
3. Neither the ~~state~~ *Judicial Council* nor the county shall charge each other rent for space that the county or the courts occupies at the time the MOU is determined. Costs associated with additional space will be paid by the agency desiring more space.

4. In the case of mixed-use buildings, the state and the county shall ~~be continue to be~~ responsible for the operations and maintenance costs associated with *their proportional* ~~the~~ shares of the building, *and the county shall also be responsible for furnishing its payments to the state for that the county is liable for the base year* operations and maintenance costs pursuant to under the terms of ~~the~~ *its* MOE for the court's share of the building, unless otherwise mutually agreed by the parties.
5. The sale of property is permissible, regardless of which party holds title; however, neither party can be displaced or forced to move at its expense, except by mutual agreement.
6. The cost of relocating from occupied space to new space will be borne by the agency desiring the new space. However, the departing party shall retain its equity interest in the vacated space.
7. The use of any space occupied by the county or the ~~state~~ *Judicial Council* must be compatible with the facility and not substantially deteriorate or diminish the ability of either the county or the ~~state~~ *Judicial Council* to use the remaining spaces effectively.
8. Should ~~the courts~~ *either party* require additional space and wish to "buy out" the current ~~county~~ tenant from its space, compensation ~~to the county~~ will be made at the current market rate.
9. *Should either party occupy 80% or more of a mixed-use facility, that party shall be permitted to require that the minority occupant vacate the premises, should the majority occupant so desire.*

Agenda Item #8 - Draft outline of Phase 5 report

The consultants reported on the progress of the Phase 5 report and stated that a copy of the report will be provided to the Committee for its review prior to the October 4 conference call.